



evaluation that was performed by Dr. Del Thomas, a clinical psychologist. Dr. Thomas concluded that Winston did not suffer from a mental disease or defect and was able to understand the proceedings against him. After obtaining a copy of Dr. Thomas's report, Winston asked the trial court to grant him a second mental evaluation. The trial court, after reviewing the report and hearing evidence on the motion, denied the request finding no justification for further testing. On appeal, Winston claims that this was an abuse of discretion.

We begin our examination by noting that this was a revocation hearing, not a criminal trial. In a criminal trial, if a defendant has made a preliminary showing that his sanity at the time of the commission of the offense is likely to be a significant issue he is entitled to the assistance of a psychiatrist. *Ake v. Oklahoma*, 470 U.S. 68 (1987). And, our state's mental-defect statutory guidelines, codified at Ark. Code Ann. § 5-2-305 (Repl. 2006), provide for psychiatric examination of a defendant, "[w]henver a defendant [is] charged in circuit court." This was not a hearing of a charge in circuit court, instead it was a sentence revocation. As such, there is an open question as to Winston's entitlement to a mental evaluation at all. Our supreme court, in *Pyland v. State*, 302 Ark. 444, 790 S.W.2d 178 (1990), has directed that whether to provide psychiatric assistance to one facing a revocation hearing must be on a case-by-case basis; the court instructs that while due process must be accorded a person facing the loss of liberty, there is no entitlement to the full range of criminal-trial safeguards, because the court is not dealing with a person who had yet to be convicted of anything. *Id.*

Here, assuming for purposes of our analysis that Winston was entitled to a mental evaluation, we now consider whether he was entitled to two evaluations. According to Ark. Code Ann. § 5-2-305 (Repl. 2006), after an initial mental evaluation has been performed

according to the statutory procedures, any further evaluation is discretionary with the trial court. After a thorough examination of the evidence, including first-hand observations of Winston's demeanor, the trial court expressed its agreement with Dr. Thomas's "sane" diagnosis and denied Winston a secondary evaluation. On appeal, Winston contends that the denial was an abuse of discretion.

According to our case law, a defendant is ordinarily presumed to be mentally competent to stand trial, and the burden is on the defendant to prove otherwise. *Bryant v. State*, 94 Ark. App. 387, 231 S.W.3d 91 (2006). Once the court reached a conclusion relating to Winston's sanity, it exercised its discretion to close the inquiry, cease further evaluation, and move on with the proceeding. We cannot say that this was done in error. Instead, it was a textbook example of the exercise of discretion that our statute provides the court in these matters. Therefore, finding no abuse of discretion, we affirm on this point.

We also note that Winston's contention that his initial evaluation was infirm because the evaluation was completed by a psychologist, not a doctor, is without merit. This question has been specifically answered in *King v. State*, 317 Ark. 293, 877 S.W.2d 583 (1994), where our supreme court concluded that a psychologist's report was sufficient under the statute.

Next, we consider Winston's companion point on appeal—he alleges that the trial court erred in its denial of his continuance request. In doing so, he attempted to fashion a confrontation-clause argument. He claimed that he had a right to question Dr. Thomas and that a continuance was appropriate because "the evaluator was required to provide . . . all . . . materials that they used in generating the report."

However, we note that a trial court shall grant a continuance only upon a showing of good cause, considering not only the requests of the parties, but also the public interest in the prompt disposition of the case. Ark. R. Crim. P. 27.3. The trial court's decision relating to the continuance will be reversed only when an abuse of discretion is shown. *Kilgore v. State*, 313 Ark. 198, 852 S.W.2d 810 (1993). Also, Winston has the additional burden of showing that he was prejudiced by the denial of the continuance to such a degree that it amounts to a denial of justice. *Id.*

At the outset, we note that Winston's confrontation-clause argument is a nonstarter. The record provides no basis for us to conclude that he was entitled to anything more than the report of his mental evaluation, which he received. Furthermore, he made no argument otherwise. Failure to cite any authority or argument in support of his points precludes us from addressing the merits. *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003).

As to the second component of his argument, that he needed more time to review the report, there is also no merit to this allegation of error. The court was able to observe Winston as he testified in the hearing to determine whether a second mental evaluation was warranted. After hearing Winston testify at length on direct examination, but refuse to answer any questions on cross examination, the court concluded that Winston was trying to "con the system." Based on these observations and the mental evaluation, the trial court found that the hearing should not be continued a fourth time. As such the court's decision did not amount to an abuse of discretion, and we affirm on this point.

Finally, Winston argues that he was not notified of the sentence that he could receive should he violate the terms of his suspended sentence. At the hearing, two Paragould police officers showed that they stopped Winston's vehicle after it had been reported that a vehicle matching that description had stolen gas. During the stop, Winston twice hit an officer in the face. A struggle ensued, and Winston was restrained without further incident. Certainly, evidence suggesting second-degree battery on a police officer is sufficient to show that Winston violated the conditions of his release. Further, he signed an acknowledgment that he understood any violation of the conditions could result in a revocation and the imposition of "any sentence . . . that might have been imposed originally." As such he was on notice of the sentence he could receive should he violate the conditions of his release, and we affirm.

Affirmed.

GLADWIN and KINARD, JJ., agree.